

**From:** Joey Smith  
**To:** Microsoft ATR  
**Date:** 12/15/01 12:08pm  
**Subject:** Settling the case with Microsoft

To whom it may concern,

I am a computer programmer and Systems Administrator with more than 8 years of experience with varying Operating Systems, and feel it my moral and civic duty to speak out against the proposed deal with Microsoft to settle the antitrust case.

Like the majority of the other programmers that I personally know, I have watched most of the recent legal developments concerning the so-called "Tech Sector" with fear and trepidation. I am not a lawyer, but I have tried to understand how the Justice Department thinks that the proposed settlement will solve anything.

It has been found that Microsoft holds a monopoly in Operating Systems Software, and that Microsoft has acted to maintain that monopoly, in clear violation of the laws of the United states. It has also been found that this monopoly has allowed Microsoft to create a "Barrier to Entry" for Application developers (see "Competitive Impact Statement", III.B.2).

I am not a lawyer, but it seems fairly clear to me that any action taken should strive to remove from Microsoft the power to maintain this monopoly. I cannot understand how the proposed settlement addresses this issue. In fact, the language of the proposed settlement in several areas gives Microsoft a government enforced monopoly, by hiding it behind such concepts as "security" and "anti-piracy". By using these words that are so emotionally bound, they have manipulated their way into a proposed settlement that does nothing to stop them from continuing their anti-competitive practices.

I would like to propose some additional actions that, from a computer programmer's point of view, are the barest minimum action that would remove this Microsoft from this position of power.

I) In addition to the proposed requirement that Microsoft make available their "API's and other Documentation", there needs to be some provision made to allow the public to obtain the file formats for both existing and future Microsoft products.

II) Microsoft should not be allowed to set the terms and price of distribution for such API's, Documentation, of file formats. I can understand if Microsoft feels they need to be fairly compensated for this information, but allowing Microsoft to set the price would give them the power to put this documentation out of the reach of those who best stand the chance to break this monopoly, and those most hurt by it.

III) In the "Revised Proposed Final Judgement", I propose that the following sections should be stricken:

III.J.2(b), III.J.2(c), III.J.2(d)

These conditions make it possible for Microsoft to exclude from these reparations the group that Microsoft's CEO himself has declared to be the single biggest threat to their business. I'm speaking of an international community of programmers who volunteer their time to give to the world software that is technically superior, freely available to everyone (including the background logic, or "source code"), and not legally encumbered by crippling or binding licenses. I speak of the people collectively referred to as the "Open Source Community".

I am a member of the Open Source Community, and have repeatedly attempted to legally obtain from Microsoft documentation that would allow me to release a product that either competes with, or cooperates with, Microsoft products, and had these attempts blocked simply due to my involvement in Open Source. In the past, there was nothing I could do except attempt to legally reverse engineer this information. But if we are to truly achieve a result which will allow a competitive marketplace, we must remove this "Applications Barrier to Entry", as discussed in "Competitive Impact Statement", III.B.2. III.J.2(b), III.J.2(c), and III.J.2(d) give Microsoft all the ammunition they require to maintain this barrier.

IV) If it is determined that Microsoft should make some sort of financial reparations, it should be declared that this may NOT be in the form of Microsoft Software, as this would simply allow Microsoft to spread their monopoly even further under the guise of compliance to the settlement.

These opinions are likely quite naive from a legal viewpoint, but from the viewpoint of a computer programmer, this is the minimum that will give us empower us to overcome the barriers Microsoft has thrown in our way.

In closing, I would like to draw your attention to the comments made by Matthew Szulik, CEO of Red Hat, Inc., generally regarded as the most successful company selling and supporting open source software.

"...contrary to the statements of the US Department of Justice in its impact statement discussing the Consent Decree, the remedies settlement embodied in the Consent Decree fails to achieve the ends mandated by the Court for the following reasons:

- it fails to deny Microsoft the fruits of its statutory violations,
- it fails to ensure that competition is likely to result,
- it was an agreement reached for the purpose of expediency, not for ensuring an adequate remedy and,
- it establishes an untenable precedent for future antitrust cases."